IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1392 of 1986

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA & 2 - Appellant(s)

Versus

DALAL RAJARAM AND COMPANY - Defendant(s)

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Appearance :

MR JS YADAV for Appellant(s) : 1 - 3.

NOTICE SERVED BY DS for Defendant(s) : 1,

(MR JV DESAI) for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 22/12/2005

ORAL JUDGMENT

1. By this appeal, the appellants challenge the judgment and decree passed by the learned Judge Presiding court no.11 of the City Civil Court at Ahmedabad in Civil Suit No.744/84 on 27th February, 1986.

2. The said suit was preferred by the present respondent against the appellants and therefore for the sake of convenience the respondent is addressed to as the plaintiff and the appellants as the defendants in this judgment.

3. The suit was filed by the plaintiff for a declaration that bill No. ATR – 93 dated 2-2-1984 issued by 2nd defendant to the plaintiff is excessive, exorbitant, illegal, bad in law, without jurisdiction and against the principles of natural justice and for a permanent injunction restraining the defendants from disconnecting the plaintiff's telephone for non payment of the said bill.

4. The facts of the case in brief as per the plaintiff can be stated thus:

4.1 The plaintiff is doing the business at Kabutarkhana, Kalupur, Ahmedabad and also at Deesa and since the defendants were providing telephone facility, the plaintiff applied to defendant No.2 to provide him speech circuit between Ahmedabad and Deesa at his business premises at Kabutarkhana, Ahmedabad. The said application was sanctioned by second and third defendants after processing the same. The communication was addressed on

2nd March, 1981 to the plaintiff regarding the rental charges for the speech circuit between Ahmedabad and Deesa for 8 hours, which totalled to Rs.11,257.50paisa per annum. The plaintiff agreed to the same and on the plaintiff making the payment, said speech circuit facility was provided to the plaintiff. Subsequently, as the plaintiff wanted the said facility to be extended for 24 years, he made application therefore, and the defendants sent a bill to the plaintiff for advance payment of the annual rent of bill dated 1-12-1982 for Rs.22,443/-. However, later on, on 2-2-84, the defendants sent a supplementary bill indicating total charges at Rs.53,827.30paisa and demanded the amount after giving credit for Rs.22,443/- already paid by the plaintiff. The plaintiff has challenged the said supplementary bill before the City Civil Court contending that no opportunity was given to him to file his objections against the revised rates and instrument and installation charges. It was alleged by the plaintiff that he was threatened by second and third defendants that if charges were not paid within 15 days on receipt of the said bill, the defendants will disconnect the said speech circuit facility without any show cause notice. The plaintiff's case is that the plaintiff is ready and willing to pay the bill amount as per the old agreed rate. The bill was

issued against the principles of natural justice, equity and good conscience and is therefore, void, illegal and bad in law.

5. On being served with the summons, the defendants approached the court with written statement Exh-19 contending *inter alia* that the plaintiff had agreed while applying for the facility to abide by the terms and conditions set forth in the Indian Telegraph Rules, 1951 as may be amended from time to time. The provisional rental was communicated to the plaintiff on 2nd September, 1981 for an amount of Rs.11,257.50paisa. However, upon receiving complete information, the Divisional Engineer, Palanpur finally calculated and worked out the rental at the rate to the extent of Rs.21,532/-. It was contended in the written statement that the plaintiff through his letter dated 3-4-1982 had requested for speech circuit facility for 24 hours and the same was communicated to him. It is the case of the defendants further that it was clarified to the plaintiff that though demand note was issued in accordance with ITR 496(1) at the rate of Rs.125/- at the time of application, subsequently, it was revised to Rs.250/- with effect from 1-3-1983 as published in the Government of India gazette dated 21-2-1983. According to the defendants, the speech circuit

tariff was revised with effect from 1-3-1983 from Rs.125/- per km per annum to Rs.250/- per km per annum, which was published in gazette as well as in the newspaper. The plaintiff had agreed to pay rental under the terms and conditions set forth in the Indian Telegraphs Rules, 496 as amended from time to time. Therefore, there is no substance in the suit and the suit may be dismissed.

6. The trial court after considering the rival side contentions framed issues as under:

1. Whether the plaintiff proves that the disputed Bill bearing No.ATR-93 dtd 2-2-84 issued by the defendants is illegal, without jurisdiction, arbitrary , malafide, against the principles of natural justice and hence the plaintiff is not bound to pay the amount thereof?
2. Whether the Suit is maintainable?
3. Whether the Suit is bad for want of jurisdiction?
4. What order and decree?

7. The findings on the above issues were given by the trial court as under:

ISSUE NO.1 : The Bill is illegal, arbitrary and not maintainable at law.

ISSUE NO.2 : The Suit is maintainable.

ISSUE NO.3 : In the negative

ISSUE NO.4 : As per the final order.

The trial court after examining the facts, the law and the evidence led by the parties came to a conclusion that the bill in question was illegal, arbitrary and not maintainable at law and therefore, decreed the suit by declaring the said supplementary bill dated 2-2-1984 (Exh-58) to be illegal and not maintainable restraining the defendants permanently from taking any action in pursuance to non compliance with the demand contained in the said bill. This view was taken by the learned Judge of the trial court on a reasoning that the revised rates were made effective from 1st March, 1983 and they could not have been applied retrospectively. The demand notice was in respect of period prior to 1-3-1983 and therefore, the bill was bad in law. Learned Judge therefore, while decreeing the suit in favour of the plaintiff, clarified that the defendants shall be at liberty to implement revised tariff rates at the commencement of the second rental quarter for the speech circuit facility provided to the plaintiff by the defendants.

7.1 Aggrieved by the said judgment and decree, the defendants have preferred this appeal.

8. Learned counsel Mr. Yadav appearing for the appellants submitted that individual notice to subscriber is not necessary for implementing revision in the tariff. Learned counsel Mr. Yadav contended that the plaintiff had agreed to abide by the rules that may be revised from time to time and therefore, he was now to accept the supplementary bill which was issued in accordance with the revision in the tariff. Mr. Yadav therefore, submitted that the trial court committed an error in decreeing the suit, the appeal may therefore be allowed.

9. The plaintiff – respondent herein was formerly represented by learned counsel Mr. JV Desai. However, as on earlier occasions, there was no one to represent the respondent. Notices were served upon the respondent and in spite of that the respondent has chosen not to contest this appeal and he has remained unrepresented. Sufficient to record that the court has waited for sufficiently long time even after service of notice only with a view to afford reasonable opportunity to the respondent to put forth his case. However, since he has chosen not to contest this appeal and has consistently kept himself aloof from this litigation before this court even after notice, this court is constrained to proceed with the matter ex parte against the respondent.

10. This court has taken into consideration the contentions raised by the learned counsel Mr. Yadav.

11. Since the cases of rival sides rested in documentary evidence, neither side adduced any oral evidence. From the documentary evidence, it is clear that initially, the plaintiff sought the facility for 8 hours in a day and thereafter, he sought enhancement of the facility for 24 hours in a day, at that time, a bill was issued for an amount of Rs.21,443/- for change of the facility with effect from 26-1-1983. However, pursuant to revision in the tariff, the annual rental charges were enhanced from Rs.125/- per km per annum to Rs.250/- per km per annum with effect from 1-3-1983. The said tariffs were announced by publishing the same in gazette on 21-2-1983. Following that enhancement, a supplementary bill was issued to the plaintiff, which was objected to by the plaintiff on the ground that such retrospective effect cannot be given to the enhanced rate and that had he known at the time of installation of the facility that the revised rates are going to be doubled, he would definitely have declined to have the facility.

12. Much stress was put on rule 496 of the Rules framed

under Indian Telegraph Act, which reads as under:

"(I) (a) When a telephone circuit is provided wholly by utilising existing wires or channels, the charges shall be calculated at the rate of one hundred and twenty five rupees per Kilometre per annum with a minimum guarantee period of three months:

Provided that where new constructions or installations are involved for the whole or part of the circuits:

(i) special rates of charges may be fixed by the telegraph authority taking into account the cost of construction and other relevant factors, and

(ii) Longer guarantee periods may be specified.

(b) The charges for a month shall be equal to one twelfth of the annual charges."

A plain reading of this provision would make it clear that the present case by no stretch of imagination, can be said to be governed by this provision. The question that would be required to be examined would whether the supplementary bills issued applying the revision of tariff retrospectively can be upheld or not. This will have to be examined in light of the fact that earlier bill for that period was issued by the defendants and paid by the plaintiff according to the old tariff. In the opinion of this court, no error can be said to have been committed by the trial court when it came to a conclusion that the revised tariff could not have been applied retrospectively for a period prior to 1-3-1983.

When even as per the defendants, the revised rates were put for the first time in gazette on 21-2-1983 and were effective from 1-3-1983, they could not have been applied and supplementary bill issued for a period prior to 1-3-1983. Therefore, in absence of any other view possible to be taken legally, the view taken by the trial court, which is found to be perfectly legal has to be upheld and the decree passed by the trial court deserves to be confirmed.

13. As a result, appeal must fail, same is accordingly dismissed. Decree passed by the learned City Civil Judge, Court No.11, Ahmedabad is confirmed. Notice is discharged with no order as to costs.

(A.L.DAVE,J)

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